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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,059	12/19/2001	Patricia Lee Christon	8819	6014

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THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/30/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/025,059

Applicant(s)

CHRISTON ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 17 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Benecke et al. (US 2003/0114818).

As to claim 1, Benecke et al. (hereinafter "Benecke") disclose an absorbent article having an upper surface, a lower surface and a periphery comprising a topsheet having a bottom surface and a viewing surface positioned opposite to the bottom surface, the viewing surface facing upwardly towards the upper surface of the absorbent article (page 2, paragraph 0036), a backsheet having a garment facing surface and a user facing surface positioned oppositely to the garment facing surface (page 2, paragraph 0037), the backsheet being joined to the topsheet (page 3, paragraph 0045); an absorbent core (16) having a top surface and a bottom surface positioned opposite to the top surface, the absorbent core being positioned between the topsheet and the backsheet (figure 11B); and the absorbent article having a colored portion and a non-colored portion (page 7, paragraph 0070), the colored portion and the non-colored

Art Unit: 3761

portion being viewable from the viewing surface of the topsheet (figure 11B), the colored portion having at least two shades, a first shade and a second shade, the first shade being positioned substantially within the second shade, the second shade being different from the first shade (page 7, paragraph 0073), the at least two shades operating to create a perception of depth within the absorbent article by a user looking upon the viewing surface of the topsheet as set forth on page 3, paragraph 0048.

Benecke discloses that a fluorescent pigment or dye (a shade different from the first) may be mixed in the colored surface pigment or dye positioning the material at least substantially within the second shade. Benecke also discloses that the more than one color may be presented in the hydrophobic surfaces as set forth on page 7, paragraph 0075.

As to claim 2, Benecke discloses an absorbent article wherein the first shade of the color (darker colored material of 22) is darker than the second shade of the color (white ribbons of 20) as set forth on page 7 in paragraph 0070.

With respect to claims 3 – 7, see page 4 of Benecke for the disclosure of LAB system utilizing the Hunter test to measure the L, a and b values of the colors. The same formula is used to determine the color differences and every value of color space is disclosed (page 4, paragraph 0054) which would provide the claimed color differences.

Regarding claim 8, Benecke discloses an absorbent article wherein the size of the colored portion ranges from about 5% to about 98% of the viewing surface of the topsheet as set forth on page 14, paragraph 0106. The examiner contends that if the

Art Unit: 3761

translucent portion (non-colored portion) covers 50% of the article, then it is inherent the colored portion would also comprise 50% of the article thereby meeting the claimed limitations.

As to claim 9, Benecke discloses an absorbent article wherein the first shade of the colored portion is positioned substantially centrally in relation to the second shade of the colored portion as set forth in figure 11B.

With reference to claim 10, Benecke discloses an absorbent article wherein the colored portion is an insert positioned between the topsheet and the absorbent core as set forth on page 7 in paragraph 0071. Benecke states that the dark colored fabric is also the fabric of the containment layer. Further, Benecke states that the containment layer may be covered by a topsheet as set forth on page 2, paragraph 0036.

Regarding claim 11, Benecke discloses that the dark colored fabric is the containment layer as set forth on page 7 in paragraph 0071. Benecke also states that a topsheet is optional on page 2 in paragraph 0036. The examiner contends that without the optional topsheet, the colored portion would form a part of the topsheet.

With respect to claim 12, Benecke discloses an absorbent article wherein the colored portions as part of the absorbent core whereby the colored portion is viewable from the viewing surface of the topsheet as set forth on page 5 in paragraph 0061. Benecke states that the topsheet is perforated which would allow for the viewing of the colored layer and the examiner contends that the colored layer may be considered a part of the absorbent core since the liquid permeable layer would also function in retaining some liquid.

Art Unit: 3761

As to claim 13, Benecke discloses the colored portion as a multi-layered insert (20,22) that is positioned beneath the topsheet as set forth on page 2, paragraph 0036 as previously explained in the rejection of claim 10.

With respect to claim 14, Benecke discloses a colored portion having a multi-colored insert (see the rejection of claim 1) positioned beneath the topsheet (the optional cover sheet) and comprising at least a first layer (20) and a second layer (22) wherein the first layer comprises one shade of color and wherein the second layer comprises another shade of color as set forth on page 7 in paragraph 0071.

With reference to claims 15 – 17, Benecke discloses the topsheet (the containment layer without the optional cover sheet) as a formed film and a nonwoven as set forth on page 3 in paragraph 0043.

As to claim 19, Benecke discloses a colored portion ranging from about 5% to about 100% of the viewing surface of the topsheet as set forth on page 7, paragraph 0073.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1 – 17 have been considered but are moot in view of the new ground(s) of rejection.

In response to the applicant's argument that Benecke does not teach a colored portion and a non-colored portion wherein the colored portion has a first shade and a second shade with the first shade being positioned substantially within the second

Art Unit: 3761

shade, the examiner refers to the rejection of claim 1 which clarifies Benecke's disclosure of the colored portions and their positions.

Benecke discloses that a fluorescent pigment or dye (a shade different from the first) may be mixed in the colored surface pigment or dye positioning the material at least substantially within the second shade. Benecke also discloses that the more than one color may be presented in the hydrophobic surfaces as set forth on page 7, paragraph 0075.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 3761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

*Michele Kidwell*  
Michele Kidwell  
December 29, 2003

*[Signature]*  
KIM M. LEWIS  
PRIMARY EXAMINER  
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